



General Assembly

Substitute Bill No. 1003

January Session, 2009

* SB01003JUD 040209 *

***AN ACT CONCERNING AFFIRMATIVE ACTION PLANS, HOUSING
DISCRIMINATION AND ATTORNEY'S FEES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 46a-54 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2009*):

4 The commission shall have the following powers and duties:

5 (1) To establish and maintain such offices as the commission may
6 deem necessary;

7 (2) To organize the commission into a division of affirmative action
8 monitoring and contract compliance, a division of discriminatory
9 practice complaints and such other divisions, bureaus or units as may
10 be necessary for the efficient conduct of business of the commission;

11 (3) To employ legal staff and commission legal counsel as necessary
12 to perform the duties and responsibilities under section 46a-55. One
13 commission legal counsel shall serve as supervising attorney. Each
14 commission legal counsel shall be admitted to practice law in this state;

15 (4) To appoint such investigators and other employees and agents as
16 it deems necessary, fix their compensation within the limitations
17 provided by law and prescribe their duties;

18 (5) To adopt, publish, amend and rescind regulations consistent
19 with and to effectuate the provisions of this chapter;

20 (6) To establish rules of practice to govern, expedite and effectuate
21 the procedures set forth in this chapter;

22 (7) To recommend policies and make recommendations to agencies
23 and officers of the state and local subdivisions of government to
24 effectuate the policies of this chapter;

25 (8) To receive, initiate as provided in section 46a-82, as amended by
26 this act, investigate and mediate discriminatory practice complaints;

27 (9) By itself or with or by hearing officers or human rights referees,
28 to hold hearings, subpoena witnesses and compel their attendance,
29 administer oaths, take the testimony of any person under oath and
30 require the production for examination of any books and papers
31 relating to any matter under investigation or in question;

32 (10) To make rules as to the procedure for the issuance of subpoenas
33 by individual commissioners, hearing officers and human rights
34 referees;

35 (11) To require written answers to interrogatories under oath
36 relating to any complaint under investigation pursuant to this chapter
37 alleging any discriminatory practice as defined in subdivision (8) of
38 section 46a-51, and to adopt regulations, in accordance with the
39 provisions of chapter 54, for the procedure for the issuance of
40 interrogatories and compliance with interrogatory requests;

41 (12) To utilize such voluntary and uncompensated services of
42 private individuals, agencies and organizations as may from time to
43 time be offered and needed and with the cooperation of such agencies,
44 (A) to study the problems of discrimination in all or specific fields of
45 human relationships, and (B) to foster through education and
46 community effort or otherwise good will among the groups and
47 elements of the population of the state;

48 (13) To require the posting by an employer, employment agency or
49 labor organization of such notices regarding statutory provisions as
50 the commission shall provide;

51 (14) To require the posting, by any respondent or other person
52 subject to the requirements of section 46a-64, 46a-64c, 46a-81d or 46a-
53 81e, of such notices of statutory provisions as it deems desirable;

54 (15) (A) To require an employer having three or more employees to
55 post in a prominent and accessible location information concerning the
56 illegality of sexual harassment and remedies available to victims of
57 sexual harassment; and (B) to require an employer having fifty or more
58 employees to provide two hours of training and education to all
59 supervisory employees within one year of October 1, 1992, and to all
60 new supervisory employees within six months of their assumption of a
61 supervisory position, provided any employer who has provided such
62 training and education to any such employees after October 1, 1991,
63 shall not be required to provide such training and education a second
64 time. Such training and education shall include information
65 concerning the federal and state statutory provisions concerning
66 sexual harassment and remedies available to victims of sexual
67 harassment. As used in this subdivision, "sexual harassment" [shall
68 have] has the same meaning as set forth in subdivision (8) of
69 subsection (a) of section 46a-60, and "employer" [shall include]
70 includes the General Assembly;

71 (16) To require each state agency that employs one or more
72 employees to (A) provide a minimum of three hours of diversity
73 training and education (i) to all supervisory and nonsupervisory
74 employees, not later than July 1, 2002, with priority for such training to
75 supervisory employees, and (ii) to all newly hired supervisory and
76 nonsupervisory employees, not later than six months after their
77 assumption of a position with a state agency, with priority for such
78 training to supervisory employees. Such training and education shall
79 include information concerning the federal and state statutory
80 provisions concerning discrimination and hate crimes directed at

81 protected classes and remedies available to victims of discrimination
82 and hate crimes, standards for working with and serving persons from
83 diverse populations and strategies for addressing differences that may
84 arise from diverse work environments; and (B) submit [an annual] as
85 part of its affirmative action plan a report to the Commission on
86 Human Rights and Opportunities concerning the status of the
87 diversity training and education required under subparagraph (A) of
88 this subdivision. The information in such [annual reports] report shall
89 be reviewed by the commission. [for the purpose of submitting an
90 annual summary report to the General Assembly.] Notwithstanding
91 the provisions of this section, if a state agency has provided such
92 diversity training and education to any of its employees prior to
93 October 1, 1999, such state agency shall not be required to provide
94 such training and education a second time to such employees. The
95 requirements of this subdivision shall be accomplished within
96 available appropriations. As used in this subdivision, "employee"
97 [shall include] includes any part-time employee who works more than
98 twenty hours per week;

99 (17) To require each agency to submit information demonstrating its
100 compliance with subdivision (16) of this section as part of its
101 affirmative action plan and to receive and investigate complaints
102 concerning the failure of a state agency to comply with the
103 requirements of subdivision (16) of this section; and

104 (18) To enter into contracts for and accept grants of private or
105 federal funds and to accept gifts, donations or bequests, including
106 donations of service by attorneys.

107 Sec. 2. Subsection (a) of section 46a-56 of the general statutes is
108 repealed and the following is substituted in lieu thereof (*Effective*
109 *October 1, 2009*):

110 (a) The commission shall:

111 (1) Investigate the possibilities of affording equal opportunity of
112 profitable employment to all persons, with particular reference to job

113 training and placement;

114 (2) Compile facts concerning discrimination in employment,
115 violations of civil liberties and other related matters;

116 (3) Investigate and proceed in all cases of discriminatory practices as
117 provided in this chapter and noncompliance with the provisions of
118 section 4a-60 or 4a-60a or sections 46a-68c to 46a-68f, inclusive;

119 (4) From time to time, but not less than once a year, report to the
120 Governor as provided in section 4-60, making recommendations for
121 the removal of such injustices as it may find to exist and such other
122 recommendations as it deems advisable and describing the
123 investigations, proceedings and hearings it has conducted and their
124 outcome, the decisions it has rendered and the other work it has
125 performed;

126 (5) Monitor state contracts to determine whether they are in
127 compliance with sections 4a-60 and 4a-60a, and those provisions of the
128 general statutes which prohibit discrimination; and

129 (6) Compile data concerning state contracts with female and
130 minority business enterprises and submit a report [annually]
131 biennially to the General Assembly concerning the employment of
132 such business enterprises as contractors and subcontractors.

133 Sec. 3. Section 46a-68 of the general statutes is repealed and the
134 following is substituted in lieu thereof (*Effective October 1, 2009*):

135 (a) Each state agency, department, board and commission shall
136 develop and implement, in cooperation with the Commission on
137 Human Rights and Opportunities, an affirmative action plan that
138 commits the agency, department, board or commission to a program of
139 affirmative action in all aspects of personnel and administration. Such
140 plan shall be developed pursuant to regulations adopted by the
141 Commission on Human Rights and Opportunities, in accordance with
142 chapter 54, to ensure that affirmative action is undertaken as required

143 by state and federal law to provide equal employment opportunities
144 and to comply with all responsibilities under the provisions of sections
145 4-61u to 4-61w, inclusive, sections 46a-54 to 46a-64, inclusive, as
146 amended by this act, section 46a-64c and sections 46a-70 to 46a-78,
147 inclusive. The executive head of each such agency, department, board
148 or commission shall be directly responsible for the development, filing
149 and implementation of such affirmative action plan.

150 (b) (1) Each state agency, department, board or commission shall
151 designate a full-time or part-time affirmative action officer. If such
152 affirmative action officer is an employee of the agency, department,
153 board or commission, the executive head of the agency, department,
154 board or commission shall be directly responsible for the supervision
155 of the officer.

156 (2) The Commission on Human Rights and Opportunities shall
157 provide training and technical assistance to affirmative action officers
158 in plan development and implementation.

159 (3) The Commission on Human Rights and Opportunities and the
160 Permanent Commission on the Status of Women shall provide training
161 concerning state and federal discrimination laws and techniques for
162 conducting investigations of discrimination complaints to persons
163 designated by state agencies, departments, boards or commissions as
164 affirmative action officers and persons designated by the Attorney
165 General or the Attorney General's designee to represent such agencies,
166 departments, boards or commissions pursuant to subdivision (5) of
167 this subsection. Such training shall be provided for a minimum of ten
168 hours during the first year of service or designation, and a minimum of
169 five hours per year thereafter.

170 (4) (A) Each person designated by a state agency, department, board
171 or commission as an affirmative action officer shall (i) be responsible
172 for mitigating any discriminatory conduct within the agency,
173 department, board or commission, (ii) investigate all complaints of
174 discrimination made against the state agency, department, board or

175 commission, and (iii) report all findings and recommendations upon
176 the conclusion of an investigation to the commissioner or director of
177 the state agency, department, board or commission for proper action.

178 (B) Notwithstanding the provisions of subparagraphs (A)(i), (A)(ii)
179 and (A)(iii) of this subdivision, if a discrimination complaint is made
180 against the executive head of a state agency or department, any
181 member of a state board or commission or any affirmative action
182 officer alleging that the executive head, member or officer directly or
183 personally engaged in discriminatory conduct, or if a complaint of
184 discrimination is made by the executive head of a state agency, any
185 member of a state board or commission or any affirmative action
186 officer, the complaint shall be referred to the Commission on Human
187 Rights and Opportunities for review and, if appropriate, investigation
188 by the Department of Administrative Services. If the discrimination
189 complaint is made by or against the executive head, any member or
190 the affirmative action officer of the Commission on Human Rights and
191 Opportunities alleging that the executive head, member or officer
192 directly or personally engaged in discriminatory conduct, the
193 commission shall refer the complaint to the Department of
194 Administrative Services for review and, if appropriate, investigation. If
195 the complaint is by or against the executive head or affirmative action
196 officer of the Department of Administrative Services, the complaint
197 shall be referred to the Commission on Human Rights and
198 Opportunities for review and, if appropriate, investigation. Each
199 person who conducts an investigation pursuant to this subparagraph
200 shall report all findings and recommendations upon the conclusion of
201 such investigation to the appointing authority of the individual who
202 was the subject of the complaint for proper action. The provisions of
203 this subparagraph shall apply to any such complaint pending on or
204 after July 5, 2007.

205 (5) Each person designated by a state agency, department, board or
206 commission as an affirmative action officer, and each person
207 designated by the Attorney General or the Attorney General's designee
208 to represent an agency pursuant to subdivision (6) of this subsection,

209 shall complete training provided by the Commission on Human Rights
210 and Opportunities and the Permanent Commission on the Status of
211 Women pursuant to subdivision (3) of this subsection.

212 (6) No person designated by a state agency, department, board or
213 commission as an affirmative action officer shall represent such
214 agency, department, board or commission before the Commission on
215 Human Rights and Opportunities or the Equal Employment
216 Opportunity Commission concerning a discrimination complaint. If a
217 discrimination complaint is filed with the Commission on Human
218 Rights and Opportunities or the Equal Employment Opportunity
219 Commission against a state agency, department, board or commission,
220 the Attorney General, or the Attorney General's designee, other than
221 the affirmative action officer for such agency, department board or
222 commission, shall represent the state agency, department, board or
223 commission before the Commission on Human Rights and
224 Opportunities or the Equal Employment Opportunity Commission.

225 (c) Each state agency, department, board and commission shall file
226 an affirmative action plan developed in accordance with subsection (a)
227 of this section [.] with the Commission on Human Rights and
228 Opportunities [.] semiannually [.] except that any state agency,
229 department, board or commission which has an affirmative action plan
230 approved by the commission may be permitted to file its plan on an
231 annual basis in a manner prescribed by the commission and any state
232 agency, department, board or commission that employs twenty or
233 fewer full-time employees shall file its affirmative action plan
234 biennially. If a state agency, department, board or commission files an
235 affirmative action plan more than ninety days after the deadline for
236 such plan as set forth in the schedule for the filing of plans established
237 pursuant to subsection (g) of this section, the plan shall be deemed
238 disapproved and the agency, department, board or commission shall
239 file a new plan not later than six months after the date the original plan
240 was filed.

241 (d) The Commission on Human Rights and Opportunities shall

242 review and formally approve, conditionally approve or disapprove the
243 content of such affirmative action plans within ninety days of the
244 submission of each plan to the commission. If the commissioners, by a
245 majority vote of those present and voting, fail to approve,
246 conditionally approve or disapprove a plan within that period, the
247 plan shall be deemed to be approved.

248 (e) The Commissioner of Administrative Services and the Secretary
249 of the Office of Policy and Management shall cooperate with the
250 Commission on Human Rights and Opportunities to insure that the
251 State Personnel Act and personnel regulations are administered, and
252 that the process of collective bargaining is conducted by all parties in a
253 manner consistent with the affirmative action responsibilities of the
254 state.

255 (f) The Commission on Human Rights and Opportunities shall
256 monitor the activity of such plans within each state agency,
257 department, board and commission and report to the Governor [and
258 the General Assembly on or before April first of each year concerning
259 the results of such plans] if any state agency, department, board or
260 commission fails to file such plan.

261 (g) The Commission on Human Rights and Opportunities shall
262 adopt regulations, in accordance with chapter 54, to carry out the
263 requirements of this section. [Such regulations shall include] The
264 Commission on Human Rights and Opportunities shall promulgate a
265 schedule for semiannual, annual and biennial filing of plans. The
266 schedule shall not be deemed to be a regulation, as defined in section
267 4-166.

268 Sec. 4. Section 46a-82 of the general statutes is repealed and the
269 following is substituted in lieu thereof (*Effective October 1, 2009*):

270 (a) Any person claiming to be aggrieved by an alleged
271 discriminatory practice, except for an alleged violation of section 4a-
272 60g or 46a-68, as amended by this act, or the provisions of sections 46a-
273 68c to 46a-68f, inclusive, may, by himself or herself or by such person's

274 attorney, make, sign and file with the commission a complaint in
275 writing under oath, which shall state the name and address of the
276 person alleged to have committed the discriminatory practice, and
277 which shall set forth the particulars thereof and contain such other
278 information as may be required by the commission. After the filing of a
279 complaint pursuant to this subsection, the commission shall serve
280 upon the person claiming to be aggrieved a notice that: (1)
281 Acknowledges receipt of the complaint; and (2) advises of the time
282 frames and choice of forums available under this chapter. For the
283 purposes of this section, a "person claiming to be aggrieved" means a
284 person who claims to have been injured by a discriminatory practice or
285 who believes that he or she will be injured by a discriminatory practice
286 that is about to occur.

287 (b) The commission, whenever it has reason to believe that any
288 person has been engaged or is engaged in a discriminatory practice,
289 may issue a complaint, except for a violation of subsection (a) of
290 section 46a-80.

291 (c) The commission, whenever it has reason to believe that any
292 contractor or subcontractor is not complying with antidiscrimination
293 statutes or contract provisions required under section 4a-60, 4a-60a or
294 4a-60g or the provisions of sections 46a-68c to 46a-68f, inclusive, may
295 issue a complaint.

296 (d) The commission may issue a complaint if: (1) An affirmative
297 action plan filed pursuant to section 46a-68, as amended by this act, is
298 in violation of any of the provisions of section 4-61u or 4-61w, sections
299 46a-54 to 46a-64, inclusive, as amended by this act, section 46a-64c or
300 sections 46a-70 to 46a-78, inclusive; or (2) an agency, department,
301 board or commission fails to submit an affirmative action plan
302 required under section 46a-68, as amended by this act.

303 (e) Any employer whose employees, or any of them, refuse or
304 threaten to refuse to comply with the provisions of section 46a-60 or
305 46a-81c may file with the commission a written complaint under oath

306 asking for assistance by conciliation or other remedial action.

307 (f) Any complaint filed pursuant to this section must be filed within
308 one hundred and eighty days after the alleged act of discrimination,
309 except that any complaint by a person claiming to be aggrieved by a
310 violation of subsection (a) of section 46a-80 must be filed within thirty
311 days of the alleged act of discrimination.

312 Sec. 5. Subsection (d) of section 46a-83 of the general statutes is
313 repealed and the following is substituted in lieu thereof (*Effective*
314 *October 1, 2009*):

315 (d) (1) Before issuing a finding of reasonable cause or no reasonable
316 cause, the investigator shall afford each party and his representative an
317 opportunity to provide written or oral comments on all evidence in the
318 commission's file, except as otherwise provided by federal law or any
319 other provision of the general statutes. The investigator shall consider
320 such comments in making his determination. The investigator shall
321 make a finding of reasonable cause or no reasonable cause in writing
322 and shall list the factual findings on which it is based not later than one
323 hundred ninety days from the date of the determination based on the
324 review of the complaint, conducted pursuant to subsection (b) of this
325 section, except that for good cause shown, the executive director or his
326 designee may grant no more than two extensions of the investigation
327 of three months each.

328 (2) If the investigator makes a determination that there is reasonable
329 cause to believe that a violation of section 46a-64c has occurred, the
330 complainant and the respondent shall have twenty days from receipt
331 of notice of the reasonable cause finding to elect a civil action in lieu of
332 an administrative hearing pursuant to section 46a-84. If either the
333 complainant or the respondent requests a civil action, the commission,
334 through the Attorney General or a commission legal counsel, shall
335 commence an action pursuant to subsection (b) of section 46a-89
336 within ninety days of receipt of the complainant's or the respondent's
337 notice of election of a civil action. A complainant may intervene as a

338 matter of right in the civil action without permission of the court or the
339 parties. If the Attorney General or a commission legal counsel, and a
340 commissioner, believe that injunctive relief, punitive damages or a civil
341 penalty would be appropriate, such relief, damages or penalty may
342 also be sought pursuant to said subsection. Any civil action brought
343 under this subdivision shall be limited to such claims, counterclaims,
344 defenses or the like that would be required for the commission to have
345 jurisdiction over the complaint had the complaint remained with the
346 commission for disposition. If the Attorney General or a commission
347 legal counsel determines that a material mistake of law or fact has been
348 made in such finding of reasonable cause, the Attorney General or a
349 commission legal counsel may decline to bring a civil action and, in
350 such case, shall remand the file to the investigator for further action.
351 The investigator shall complete any such action not later than ninety
352 days after receipt of such file.

353 Sec. 6. Subsection (c) of section 46a-86 of the general statutes is
354 repealed and the following is substituted in lieu thereof (*Effective*
355 *October 1, 2009*):

356 (c) In addition to any other action taken under this section, upon a
357 finding of a discriminatory practice prohibited by section 46a-58, 46a-
358 59, 46a-64, 46a-64c, 46a-81b, 46a-81d or 46a-81e, the presiding officer
359 shall determine the damage suffered by the complainant, which
360 damage shall include, but not be limited to, the expense incurred by
361 the complainant for obtaining alternate housing or space, storage of
362 goods and effects, moving costs and other costs actually incurred by
363 the complainant as a result of such discriminatory practice and shall
364 allow reasonable attorney's fees and costs. The amount of attorney's
365 fees awarded shall not be contingent upon the amount of damages
366 requested by or awarded to the complainant.

367 Sec. 7. Section 46a-104 of the general statutes is repealed and the
368 following is substituted in lieu thereof (*Effective October 1, 2009*):

369 The court may grant a complainant in an action brought in

370 accordance with section 46a-100 such legal and equitable relief which it
371 deems appropriate including, but not limited to, temporary or
372 permanent injunctive relief, attorney's fees and court costs. The
373 amount of attorney's fees awarded shall not be contingent upon the
374 amount of damages requested by or awarded to the complainant.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2009</i>	46a-54(a)
Sec. 2	<i>October 1, 2009</i>	46a-56(a)
Sec. 3	<i>October 1, 2009</i>	46a-68
Sec. 4	<i>October 1, 2009</i>	46a-82
Sec. 5	<i>October 1, 2009</i>	46a-83(d)
Sec. 6	<i>October 1, 2009</i>	46a-86(c)
Sec. 7	<i>October 1, 2009</i>	46a-104

JUD *Joint Favorable Subst.*